

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

ROB MACINNIS

PLAINTIFF

V.

CASE NO. 5:19-cv-05160-TLB

HALLEAHWOOD DESIGNS, LLC

DEFENDANT

**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION FOR PARTIAL DISMISSAL**

Plaintiff Rob Macinnis (“Plaintiff”) filed this copyright infringement action against Halleahwood Designs, LLC (“Halleahwood”) alleging in his Amended Complaint that Halleahwood’s selling of a particular design through its website – starting on March 11, 2019 – is an infringement of Plaintiff’s copyrights in a photograph characterized as showing animals in a farm (“the Claimed Photograph”). According to Registration No. VA-2-159-401, which Plaintiff cited to in paragraph 9 of his Amended Complaint (“the 401 Registration”), and a copy of which he attached as Exhibit B to the Amended Complaint, the Claimed Photograph was first published on December 1, 2013, and registered with the Copyright Office nearly six years later (June 25, 2019). Plaintiff generally alleges that he is entitled to statutory damages for the alleged infringement, but those claims must be dismissed because he has failed to state any facts or evidence showing that the registration requirements for statutory damages are satisfied in this case (and he cannot so establish because the registration was obtained nearly

six years after publication and over one month after the allegedly infringing activity began).

The Copyright Act provides that “[a]n infringer of a copyright is liable for either (1) the copyright owner’s actual damages or any additional profits of the infringer...or (2) statutory damages.” 17 U.S.C. § 504(a). The Act further states that statutory damages are not available for “any infringement of a copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after first publication of the work.” 17 U.S.C. § 412. Thus, in order for statutory damages to be available in this case, the Claimed Photograph must have been registered either (a) before commencement of Halleahwood’s allegedly infringing activities or (b) within three months of publication of the Claimed Photograph. Neither requirement is met in this case, and Plaintiff has failed to allege any facts that would establish that either requirement is met or to otherwise plead any right to statutory damages.

Of course, Plaintiff cannot so plead any such facts because the facts do not support his position. Halleahwood began offering the allegedly infringing design depicted in Plaintiff’s Exhibit C on March 11, 2019, and began making sales of the identified design on that same date. The Claimed Photograph was not registered until June 25, 2019, as shown in the Certificate of Registration attached as Exhibit B to the Amended Complaint. Thus, the allegedly infringing activities commenced prior to the date of registration. Because the work was not registered prior to

commencement of the infringing activities, statutory damages would only be available if the work was registered within three months of publication. Here, according to Plaintiff's 401 Registration, the work was first published nearly six years earlier, on December 1, 2013.

Since neither registration requirement for statutory damages has been met, Plaintiff's claims for statutory damages is without basis. Furthermore, Plaintiff has failed to claim any facts showing he is entitled to statutory damages. For these reasons, Plaintiff's claims for statutory damages should be dismissed.

Respectfully submitted,

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